

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**ISAAC J MOELLERS  
151 – 3<sup>RD</sup> AVE NW  
OELWEIN IA 50662-1633**

**ABCO ENGINEERING CORP  
801 – 2<sup>ND</sup> AVE SE  
OELWEIN IA 50662**

**Appeal Number: 06A-UI-07469-CT  
OC: 07/02/06 R: 04  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Isaac Moellers filed an appeal from a representative's decision dated July 21, 2006, reference 01, which denied benefits based on his separation from ABCO Engineering Corporation. After due notice was issued, a hearing was held by telephone on August 10, 2006. Mr. Moellers participated personally and Exhibit A was admitted on his behalf. The employer participated by Robert Ruark, President, and Richard Thompson, Foreman.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Moellers was employed by ABCO from January 20 until June 15, 2006 as a full-time welder/fabricator. He was discharged for repeated tardiness in

reporting to work. He notified the employer at the time of hire that he did not have a driver's license but did have a ride to work. Mr. Moellers did not notify the employer that he had any medical condition that might cause him to be late for work.

On March 16, Mr. Moellers was ten minutes late because his ride did not show up to take him to work. On April 3, he was over 30 minutes late and indicated it was due to not setting his clocks ahead. He was again over 30 minutes late on April 5 because his ride did not show up. Mr. Moellers was late on May 3 for unknown reasons and received a warning notice. He was advised that the next incident of tardiness would result in a suspension. Mr. Moellers was suspended for three days on June 9 after he was again late for work. The decision to discharge was due to the fact that he was again late on June 15 because he overslept. Tardiness was the sole reason for the discharge.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Moellers was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if he was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences. Tardiness is considered a limited absence from work and is, therefore, assessed by the same criteria.

Mr. Moellers was late on seven occasions during a period of employment that lasted approximately five months. Although he suffers from narcolepsy, the administrative law judge is not satisfied that his tardiness was caused by his medical condition. This conclusion is based, in part, on the fact that he never advised the employer that his tardiness was due to narcolepsy or any other medical condition. Mr. Moellers had at least three absences that were clearly unrelated to narcolepsy. He was late on March 16 and April 5 because his ride did not show up to take him to work. He was late on April 3 because he did not set his clocks properly. Absences due to matters of purely personal responsibility, such as transportation and oversleeping, are not excused. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Mr. Moellers had been warned and suspended as a result of his repeated tardiness. In spite of the warnings, he did not take those steps necessary to ensure his timely arrival at work.

Seven periods of unexcused absenteeism during a period of five months is excessive. Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect. For the reason cited herein, it is concluded that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

#### DECISION:

The representative's decision dated July 21, 2006, reference 01, is hereby affirmed. Mr. Moellers was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/kjw